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## I. INTRODUCTION

Chairman Shays and Subcommittee members, I am pleased to be here today at the Subcommittee's invitation to testify as an expert witness concerning the legal regimes governing cruise lines in the areas of passenger security, law enforcement and jurisdiction.

My name is Larry Kaye, and I am the Senior Partner of a leading maritime law firm Kaye, Rose & Partners, LLP, which is based in California and maintains offices in Los Angeles, San Francisco and San Diego. I and the other members of my firm, in addition to representing most of the major cruise lines operating in the United States, have often consulted with and advised the International Council of Cruise Lines ("ICCL"), the industry trade association for the 15 leading cruise lines operating in North America. Since 1995 I have served as the Chairman of the ICCL's Associate Member Council, representing the interests of the 100 shore based companies, ports, suppliers and service providers who transact business regularly with the leading cruise lines. I also sit on the ICCL Board of Directors.

I have been a practicing attorney since 1979 and began specializing in maritime law and the cruise ship industry in 1980. My partners and I have been involved in many precedent-setting court decisions in maritime cases over the years in numerous state and federal jurisdictions. I am a member in good standing of the Maritime Law Association of the United States and serve on its Cruise and Passenger Ship Committee. I have lectured at maritime law seminars that have been certified for continuing legal education credit in California and Florida, and have published several articles on cruise industry legal issues affecting operators, passengers and crew. I am also the author of Chapter II of Volume 10 of the leading legal treatise on Cruise Ships, Benedict on Admiralty, entitled "Governmental Regulation."

As legal counsel to various cruise lines and to the ICCL, I know that the safety of cruise passengers and crew is of a highest priority to my clients. In representing this industry for over a quarter century, I have personally observed the changes over time and the increased care and concern the cruise industry has demonstrated to ensure the safety of passengers, regardless of where they may be sailing. As you will hear from others who are testifying today, the cruise lines are well aware of the adverse impact that even a single incident can have on the American public perception. The reality is that various U.S. law enforcement agencies not only have jurisdiction under present laws to investigate and prosecute crimes, but also are, as a matter of normal practice, routinely requested by the cruise lines to ensure American passengers are fully protected wherever they may be traveling. As a result, despite the unfortunate tragedies which inevitably occur in an industry with more than 10,000,000 patrons each year, cruise ships are an extremely safe vacation environment.

Before addressing the issues raised by the Committee's letter, I will provide an overall summary of some key issues to put my responses in the appropriate context. I believe the Committee should understand the jurisdictional power already exercised by various U.S. law enforcement agencies over criminal matters involving cruise ships. Next, I will provide the Committee statistics showing that criminal activity is not at all common at sea, and considerably more likely to occur on land. I will summarize existing laws that govern claims by passengers

relating to their shipboard safety. This legal scheme creates further incentive to ensure safety is maintained at its highest levels. Finally, I will respond to the specific questions raised, although my expertise is of a legal nature, and I will leave the operational issues to those more qualified to address them.

## II. U.S. CRIMINAL JURISDICTION OVER CRUISE SHIPS PROVIDES A HIGH LEVEL OF PROTECTION TO AMERICANS TRAVELING WORLDWIDE

The contention that cruise ships registered in nations outside the U.S. are somehow immunized from U.S. criminal laws or jurisdiction is completely false. In point of fact, Article I, Section 8 of The Constitution gives Congress the authority "To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations." Congress, by Act in 1799, provided that foreign vessels, within four marine leagues could be boarded by and compelled to present their manifests to U.S. authorities.<sup>1</sup> By the early part of the twentieth century, the Supreme Court had held that U.S. law extended to an act done on a U.S. vessel on the Congo River in Africa.<sup>2</sup>

As a result, crimes on voyages outside the U.S., even if committed on the high seas or in foreign territorial waters, can and have been investigated and prosecuted by and within the U.S. Federal law, as embodied in Title 18 of the United States Code, expressly permits the U.S. to exert its jurisdictional power over a host of crimes committed anywhere within the "special maritime and territorial jurisdiction" of the United States. That jurisdiction is delineated in 18 U.S.C. § 7 as encompassing crimes involving American victims or perpetrators *anywhere in the world*.

Pursuant to federal statutes and long-standing and widely accepted principles of international law, today the United States exercises jurisdiction in a wide range of cases involving alleged crimes at sea, including the relatively few on cruise ships, regardless of their nations of registry. Our national jurisdiction, in the case of U.S. ships, extends to offenses committed anywhere those ships operate, regardless of the nationality of the perpetrator or victim. 18 U.S.C. § 7 (1). On foreign vessels, the "special maritime and territorial jurisdiction" is defined to include not only such offenses committed *by or against anyone in U.S. territorial waters*, but also when committed *by or against Americans on the high seas*. *Id.*, § 7 (1), (7) and (8). U.S. jurisdiction even extends to offenses on foreign ships *by or against Americans in foreign territorial waters on ships departing from or arriving at the U.S.* *Id.*, § 7 (1). Therefore, U.S. criminal jurisdiction extends to the high seas and even foreign territorial waters in many circumstances.<sup>3</sup>

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<sup>1</sup> See Act of March 2, 1799, ch. 22, § 54, 1 Stat. 627.668.

<sup>2</sup> See *United States v. Flores*, 289 U.S. 137, 159 (1933).

<sup>3</sup> *United States v. Neill*, 312 F.3d 419 (9th Cir. 2002), and *United States v. Roberts*, 1 F. Supp. 2d 601, 606-07 (E.D. La. 1998), both involved crimes allegedly committed by non-U.S. citizens on foreign cruise ships on the high seas or in foreign waters. In both cases charges were brought under federal statutes which operate within the "special

Among the crimes over which the U.S. asserts such broad criminal jurisdiction are: abusive sexual contact (18 U.S.C. § 2244), aggravated sexual abuse (18 U.S.C. § 2241), arson (18 U.S.C. § 81), assault (18 U.S.C. § 113), assaulting or resisting U.S. officers (18 U.S.C. § 111), embezzlement or theft (18 U.S.C. § 661), kidnapping (18 U.S.C. § 1201), maiming (18 U.S.C. § 114), malicious mischief (18 U.S.C. § 1363), manslaughter (18 U.S.C. § 1112), murder (18 U.S.C. § 1111), receiving stolen property (18 U.S.C. § 662), robbery and burglary (18 U.S.C. § 2111), sexual abuse (18 U.S.C. § 2242), sexual abuse of a minor or ward (18 U.S.C. § 2243), stowaway (18 U.S.C. § 2199), terrorism (18 U.S.C. § 2332), and transportation for illegal sexual activity (18 U.S.C. § 2421). These statutes should allay any concerns that the U.S. lacks the necessary legal power to investigate or prosecute crimes involving its citizens or interests, even if the incident arises on the high seas or abroad on foreign ships. My own experience in hundreds of cases over the years is that crimes on board cruise ships, while quite rare, are routinely reported by cruise lines to U.S. law enforcement authorities, and are routinely investigated by the same authorities with full cooperation from each of the involved lines.

Flowing directly from the myriad of federal statutes asserting criminal jurisdiction over incidents arising at sea, even outside the U.S., are the investigative tools and resources of the nation's most powerful criminal investigative agency, the Federal Bureau of Investigation. With regard to activities in foreign countries over which the FBI may have jurisdiction, the Bureau's own web site states the following:

"Our international presence currently consists of more than 50 small Legal Attaché offices (Legats) in U.S. embassies and consulates around the world. Their goals? Simple:

- \* To stop foreign crime as far from American shores as possible;
- \* To help solve international crimes that do occur as quickly as possible.

Their activities? Staffed with agents and a support staff, they:

- \* Coordinate international investigations with their colleagues;
- \* Cover international leads for domestic U.S. investigations;
- \* Link U.S. and international resources in critical criminal and terrorist areas that better ensure the safety of the American public here and abroad. The rules for joint

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maritime jurisdiction." Both courts found the U.S. had jurisdiction to prosecute the perpetrators under 18 U.S.C. § 7. The *Roberts* court noted that prior precedents found jurisdiction on the high seas under section 7(1) without regard to vessel ownership (citing *Nixon v. United States*, 352 F.2d 601, 602 (5th Cir. 1965); *United States v. Tanner*, 471 F.2d 128, 140 (7th Cir. 1972)) and rejected the perpetrator's argument that foreign vessels are subject to the exclusive jurisdiction of the country whose flag they fly. The *Roberts* court acknowledged the five traditional theories of jurisdiction under international law and found valid jurisdiction under both passive personality (based on the U.S. nationality of victim) and objective territorial jurisdiction (effects of the act in the U.S.). The *Neil* court upheld U.S. jurisdiction over a sexual assault in Mexican waters under 18 U.S.C. § 7(8), noting the Constitution does not bar extraterritorial application of U.S. penal laws when Congress expresses such intent. The court examined whether the exercise of jurisdiction would violate international law and concluded: "international law clearly supports extraterritorial jurisdiction" under the territorial and passive personality principles.

activities and information sharing are generally spelled out in formal agreements between the United States and the Legat's host country; and

\* Coordinate FBI training classes for police in their geographic areas--everything from counterterrorism and cybercrime matters to forensic techniques to human trafficking and human rights.

The FBI's Legal Attaché program is overseen by the Office of International Operations, headed by a Special Agent in Charge, at FBI Headquarters in Washington, DC. This Office keeps in close contact with other federal agencies, Interpol, foreign police and security officers in Washington, and national and international law enforcement associations."

As a result, U.S. passengers traveling on ships anywhere around the globe have the protection of their nation's most experienced and internationally recognized criminal investigative body. Even though statistics readily demonstrate that cruise ship passengers are less frequently victims of crimes than inhabitants of even small cities across the U.S., the protection afforded those on land is limited to that available in a local police station. Rarely are crimes arising on shore in a particular city or state eligible for referral to the FBI.

Cases investigated by the FBI, including those arising on cruise ships, are prosecuted by any number of U.S. attorneys throughout the nation, depending on a variety of factors including the residence of the victim and perpetrator, the place of the crime, the place with custody of the accused, and others. Cases prosecuted by the United States benefit from the full panoply of federal criminal jurisdiction, including superior subpoena power of the nationwide federal court system to compel testimony of witnesses and production of evidence, national and international extradition procedures and resources, and a worldwide investigative capability that is second to none.

### III. LEGAL REPORTING REQUIREMENTS FOR CRIMES ON CRUISE SHIPS

The Ports and Waterways Safety Act, 33 U.S.C. § 1221, *et seq.*, authorized international agreements in cooperation with the International Maritime Organization ("IMO") for reporting casualties in certain geographic areas adjacent to the United States [33 U.S.C. § 1230] as well as regulations to implement the Act's provisions. The regulations on Security of Passenger Vessels, promulgated by the Coast Guard and Department of Homeland Security pursuant to 33 U.S.C. § 1231 ("SPV regulations") were adopted in 1998 and amended in 2001 and 2002. They require a passenger vessel operator or security officer to report to the FBI "each breach of security, unlawful act, or threat of an unlawful act against any of your passenger vessels to which this part applies, or against any person aboard it, *that occurs in a place subject to the jurisdiction of the United States.*" 33 C.F.R. § 120.220 (a) (emphasis added). Section 120.210(6) requires the security officer to report any "occurrences or suspected occurrences" of unlawful acts. An unlawful act is defined as a felony. 33 C.F.R. § 120.110.

As discussed in Section II above, numerous crimes are, by statute, among those included as felonies when committed in the "special maritime and territorial jurisdiction" of the U.S. or on

a vessel. Again, U.S. criminal jurisdiction extends to the high seas and even foreign territorial waters in certain circumstances. In many instances of felonies on ICCL ships, all waters of the world are potentially considered "a place *subject* to the jurisdiction of the United States" possibly triggering the reporting requirement of 33 C.F.R. § 120.220 (a). That is why, in addition to industry's own zero tolerance policy on crime, the ICCL cruise lines routinely report all crimes involving Americans to the FBI. The reports received by the Committee from each line readily demonstrate a near 100% reporting record.

Even though all the listed felonies are subject to U.S. jurisdiction in the circumstances enumerated, Title 33 C.F.R. § 120.100 states the *reporting* regulations *only* apply to voyages of more than 24 hours, any part of which is on the high seas *and for which passengers are embarked or disembarked in the U.S. or its territories*. Again, the enumerated crimes are subject to the jurisdiction of the United States when committed by or against (1) anyone in U.S. waters; (2) Americans on the high seas; or (3) Americans in foreign waters when the ship embarks or disembarks in the U.S. In all three of these situations the incident must be reported if the ship embarks or disembarks in the U.S. As the Committee will observe from the reports of the ICCL member lines, the lines report all felonies involving Americans to the FBI, *regardless whether the ship embarks or disembarks in the U.S.* This is actually more than the law requires.

Additionally, on January 10, 2006, immediately after this Committee's last hearing, the ICCL arranged a meeting between the FBI, Coast Guard, Immigration and Customs Enforcement and Customs and Border Protection. The purpose of the meeting was to discuss a thorough review of the reporting procedures to ensure that there would be a consistent and uniform protocol, so that one report would be sent to the relevant agency interested in a particular class of matters. This is in addition to the current required reporting to the FBI. The meeting was extremely productive and the parties appear to be working together toward a formal Memorandum of Understanding/Agreement to ensure all agencies and industry have a clear understanding of the industry's responsibility.

#### IV. STATISTICAL ANALYSIS OF CRIME AND CRIME REPORTING IN THE CRUISE INDUSTRY

My understanding of the reports sent by the all the cruise lines within the ICCL in response to the Committee's request for information on sexual assaults, missing persons and robberies, is that over the last three years there were 206 *total* such incidents reported to the lines (excluding 5 persons initially reported missing who were found). Of this total number of incidents, it appears only eight were not reported by the lines to law enforcement authorities. Four of those were never reported by the claimants during the cruise. Three were reported directly to the authorities by the claimants. One claimant requested the incident not be reported. Therefore, of all the incidents reported on board a ship during a cruise, all were actually reported to the authorities except one. Although the Committee did not specifically request information from the cruise lines on whether the incidents were reported, this information was voluntarily provided to demonstrate the industry's commitment to deterring any criminal activity on board their ships.

Even one incident of criminal activity arising on a vacation cruise is one too many. Despite conjecture to the contrary, the cruise industry depends heavily for its survival on a positive image as a safe vacation alternative, and therefore nothing is more important than ensuring its ships are safe and crime is punished and deterred. To that end the objectives of this Committee and the cruise lines are the same. The information provided to this Committee clearly demonstrates that crime on board is, in fact, rare. According to information provided to the Committee, more than 30 million passengers were carried by the ICCL cruise lines during the three-year period from January 1, 2003 through December 31, 2005. Out of this total population, 178 alleged sexual assaults were reported, as well 24 missing persons (excluding the five who were rescued or found), and four robberies. This translates into approximately 0.59 total sexual assaults per 100,000 persons carried (or less than six per million), 0.08 missing persons per 100,000 persons carried (or just over one per million), and 0.013 robberies per 100,000 persons carried (or about 1 for every 8 million).

Despite these strikingly low numbers, not all these alleged crimes were determined to be crimes at all. Not all of them were situations in which a passenger was the victim or a crewmember was the accused. For example, of the total number of sexual assaults reported by the cruise lines, it appears that approximately 42% (i.e. almost half) were actually situations where a passenger was accused of committing the assault. Of the 24 missing persons, 12 were deemed suicides and unrelated to crimes committed against those individuals, one was deemed an accidental fall overboard, and the remaining 11 are missing for unknown reasons. This means that in the cruise industry, a total of 11 persons actually went "missing" in three years out of 30,000,000 people carried.

It is true that not all 30,000,000 passengers carried were on board year round, and thus a comparison to annual shore side statistics maintained by the FBI is difficult to make. I understand that in the prior hearing conducted by this Committee on cruise industry security, concern was expressed by some lawmakers that the statistical comparison should be based on the total passengers carried by the cruise industry at any single time, rather than the total number over the three year period in question. The Committee is reminded, however, that the average cruise is one week long, and new passengers board the ships each week, year round. Statistics gathered by the FBI for crimes on land are based on "inhabitants", which in most communities is a constant number that does not change. In the cruise industry, the "inhabitants" change each week, as do their behaviors, backgrounds and demographics.

## **V. U.S. CIVIL JURISDICTION OVER CRUISE SHIPS PROVIDES A LEVEL OF PROTECTION TO PASSENGERS AS HIGH OR HIGHER THAN PATRONS ON LAND**

### **A. U.S. and Even Foreign Passengers Have Broad Access to U.S. Courts**

The suggestion that cruise ship passengers enjoy fewer protections under U.S. maritime law than victims of similar torts occurring on land is also inaccurate. The broad reach of U.S. civil jurisdiction to claims arising on cruise ships enables any U.S. passenger who sails from or to a U.S. port to seek redress in U.S. courts. Even U.S. passengers who travel abroad to take a



cruise, for example in the Mediterranean, are able to file suit against the cruise line in the U.S. if the company's operations base is here. Most or all cruise lines routinely carrying U.S. passengers maintain a base of operations or principle office in the U.S. Even foreign passengers who take cruises on U.S.-based ships are able to sue in the U.S.

The liberal access to U.S. courts for cruise passengers is often broader than that available to U.S. citizens suing on similar claims ashore. Under long established federal and state laws, including the U.S. Constitution, cruise passengers can file suit in *either* federal or state courts seeking civil damages against cruise lines ranging from alleged breach of contract, to tort liability for injuries or wrongful deaths caused by the negligence of the cruise line or its agents or employees. Passengers, unlike citizens on land, have a *choice* of filing in either state or federal court in most cruise line cases because of the maritime nature of the claim. Any foreign flag under which the ship is registered has no bearing whatsoever on the passenger's ability to file suit in the U.S. if the cruise line is based in the U.S., or if the ship routinely sails to or from a U.S. port.

Suits against cruise lines trading in the U.S. for personal injuries caused by slips, trips and falls, as well as claims for lost or damaged baggage or property, inadequate service or mere disappointment, are routinely filed in New York, Florida, California, and Washington. Generally a foreign cruise line is subject to U.S. jurisdiction in any state where it regularly transacts business, has a principle office, or maintains even "minimum contacts" if the claim arises out of those contacts. This is another reason why every cruise line with a U.S. headquarters or operations base can be sued in the U.S. by passengers who have traveled anywhere in the world on that line's ships.

Most cruise line ticket contracts do contain a forum selection clause designating where in the U.S. suit must be filed against each line, and the U.S. Supreme Court has ruled these clauses reasonable and enforceable, unless procured by fraud or overreaching. Similar clauses are found in contracts governing hotels, theme parks, horseback riding, skiing, harbor excursions, and sightseeing busses, planes or aircraft. In fact, forum selection clauses have become rather standard throughout the U.S. consumer tourism industry. In the cruise industry, the clause invariably calls for suit to be filed in the state where the cruise line is headquartered, which is often the same state where the passenger boarded the ship. Thus, the vast majority of cases involving a U.S. passenger, a U.S. forum is made available for the resolution of their claim or dispute.

**B. Stricter Legal Standards Are Often Applied to Cruise Lines than Comparable Businesses on Land**

U.S. general maritime common law, coupled with a collection of federal statutes, both of which have evolved considerably over the last century, govern passenger suits against cruise lines. The standard of care is typically the same or more stringent than applied on land in similar contexts. The Supreme Court has held a ship owner owes to all who board the ship for reasons germane to the ship owner's business a duty of reasonable care under the circumstances. Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959).

If an injury is caused by a condition that is typical of similar conditions arising on land (such as tripping on a dance floor), the courts have applied the same traditional "negligence" standard applied in cases arising on land. *Rainey v. Paquet Cruises, Inc.* 709 F.2d 169 (2<sup>nd</sup> Cir. 1983). If, however, the injury is caused by a condition peculiar to maritime travel, such as the use of a tender boat or gangway, a higher duty of care is imposed on the cruise line and liability is easier for the passenger to prove. See *id.*; see also *Montelone v. Bahama Cruise Line, Inc.*, 838 F.2d 63 (2<sup>nd</sup> Cir. 1988); *Beard v. Norwegian Caribbean Lines*, 900 F.2d 71 (6<sup>th</sup> Cir. 1990). Cruise lines are also held to a higher duty of care than ordinary negligence if the injured passenger was disabled. See *Alpert v. Zim Lines*, 370 F.2d 115 (2<sup>nd</sup> Cir. 1966); *American President Lines, Ltd. v. Lundstrom*, 323 F.2d 817 (9<sup>th</sup> Cir. 1963).

These established principles hold the cruise lines liable whenever negligence of the line or its agents or employees causes, in whole or part, any injury to a passenger. The cruise ship's foreign flag, itinerary or corporate structure cannot operate to deprive any passenger of redress or access to American courts. In fact, by federal statute, if a cruise embarks, disembarks, at or even calls at any U.S. port during the voyage, any provision of a ticket contract which tends to weaken or lessen the right to a trial in a court, or limit damages for negligence, is legally void. See 46 U.S.C. App. § 183c.

### *1. Sexual Assault Cases*

The maritime law governing alleged sexual assault against passengers by crewmembers is a specific example where passengers often receive much greater protection on ships than on land, even though the documented instances of assaults are far greater on land than at sea. Currently, the Courts in the federal Eleventh Circuit (encompassing much of the Southeastern United States, including Florida) and the Ninth Circuit (encompassing the Western United States, including California, Washington, Alaska and Hawaii) both impose *strict, absolute liability on the cruise line* whenever a crewmember assaults a passenger. This strict liability standard was recently extended to an alleged sexual assault by a waiter occurring ashore during a week long cruise. A minority of other jurisdictions, such as New York, require a showing of actual negligence by the cruise line (in the hiring, screening or retention of the employee) before the line can be held vicariously liable for an unforeseen criminal assault by a crew member against a passenger.

In those jurisdictions where most of the North American cruise business is centered, the law imposed on cruise lines is far more stringent than that applied to any other business on land or at sea. If a cruise passenger establishes an unwanted sexual advance by a crew member, the line must automatically pay all damages claimed and proved to a jury, even if the company took all reasonable steps to screen and hire the crew, arranged adequate security, and had no prior complaint or notice of the propensity to commit the crime.

This "strict liability" standard is the most stringent known to American tort law, and on land is only applied in cases involving defectively designed or manufactured consumer products, or ultra-hazardous activities. On land, operators of hotels, theme parks, restaurants, office buildings, hospitals and other facilities are generally *not* held strictly liable for sexual assaults on patrons. Thus, a guest in a hotel ashore could not hold the hotel owner liable for an alleged

assault by a hotel employee absent a showing of negligent hiring or retention. The same would be true for an assault by a waiter in a restaurant. Yet when the identical incident is claimed to have occurred on a cruise ship, in many instances the cruise line is automatically liable for all damages.

## ***2. Cases Involving Intoxicated Guests***

Another example of how cruise lines have been held to a more stringent liability standard than on land is with regard to service of alcohol. Almost every state in the nation has enacted a so-called "dram shop" act. Generally, all of these acts bestow some form of immunity on servers of alcohol from civil liability for injuries or deaths caused by an intoxicated patron. The public policy behind these laws is that the culpability for drinking to excess should be placed squarely on the person who consumes the alcohol, not on the person who serves it. Shifting civil liability away from the intoxicated patron tends to lessen one's incentive to drink responsibly. In several states, exceptions exist to this immunity of servers of alcohol only when such beverages are knowingly sold to minors or habitual drunkards.

There is no federal dram shop statute, and no rule of immunity for cruise lines from civil liability for injuries caused to or by intoxicated patrons. In Florida, for example, cruise lines have been held liable for injuries sustained by an intoxicated patron who fell and sued the cruise line for "allowing him" to become intoxicated. Hall v. Royal Caribbean Cruises, Ltd. 888 So. 2d 654 (Fla. 3d DCA 2004). The same approach has been adopted in Indiana, New York and Texas. See, e.g., Kludt v. Majestic Star Casino, 200 F. Supp. 2d 973 (N.D. Ind. 2001); Bay Casino, L.L.C. v. M/V Royal Empress, 1999 A.M.C. 502 (E.D.N.Y. 1999); Young v. Players Lake Charles, L.L.C., 1999 A.M.C. 2529 (S.D. Tex 1999); and Thier v. Lykes Bros., Inc., 900 F. Supp. 864 (S.D. Tex. 1995). Only one state to date has held that a state's dram shop immunity can be applied to a passenger's claim against a cruise line. Meyer v. Carnival Cruise Lines, 1995 A.M.C. 1815 (N.D. Cal. 1994). The net result is that cruise lines, unlike their shore side counterparts, have been sued, sometimes successfully, for injuries and damages arising from the negligent acts of intoxicated patrons. In other words, the liability standard applied against cruise operators is more stringent, even though cruise patrons do not generally operate motor vehicles after imbibing and are much less prone to serious injury than patrons on land.

### **C. Damages Recoverable by Cruise Passengers**

Among the monetary recoveries permitted under U.S. maritime law in a personal injury case are: past, present and future medical bills, lost wages and/or benefits, loss of wage earning capacity, pain and suffering, and emotional distress. Maritime law permits recovery against any party found even partially responsible for the injury, offset only by the amount of damages proportionate to the claimant's own degree of fault. The same recoveries are permitted in wrongful death cases arising in territorial waters of the United States, and the Supreme Court has recently held that state wrongful death and survival statutes may complement remedies under the general maritime law for deaths of passengers in territorial waters. See Yamaha Motor Corp. USA v. Calhoun, 516 U.S. 199 (1996).

To further secure a passenger's claim against a cruise line, U.S. maritime law grants a lien to the passenger to secure his/her claim or that of a personal representative. This "*in rem*" lien attaches to the vessel automatically by operation of law and can be foreclosed upon by simply arresting and seizing the ship to secure the passenger's claim. The reality is that cruise ships are rarely, if ever, arrested because passenger claims are uniformly paid via insurance carried by every cruise line that is a member of the ICCL.

State consumer laws have also been relied upon to file claims for alleged unfair or deceptive advertising and these and other cases involving larger numbers of passengers who have similar complaints have often been certified as class actions. Many of these statutes enable the prevailing passenger representative to recover attorney's fees, interest and/or penalties. For all of the above reasons, by far the vast majority of passenger claims in the cruise industry are litigated in American courts.

In the relatively rare cases involving death on cruise ships outside U.S. waters, U.S. federal law bestows on passengers the right to sue in either federal or state court for wrongful death under the federal Death on the High Seas Act. First enacted in 1920, this national legislation ensures that all heirs of those whose deaths are caused by acts occurring outside U.S. waters still have recourse in U.S. courts. DOHSA permits recovery of all pecuniary loss suffered by the heirs, including loss of services, support, dependency, inheritance, as well as any medical, burial or other expenses incurred. DOHSA does not permit recovery of non-pecuniary loss, such as loss of consortium, grief and sorrow and other intangible items. DOHSA represents Congress' considered judgment on what remedies should be appropriate when access is so liberally granted to U.S. courts to litigate wrongful death claims occurring all over the world, and often brought in U.S. courts by non-U.S. citizens. In many instances the recovery under DOHSA is more liberal than that permitted in the foreign jurisdiction where the claimant resides or the act actually occurred. There is no cap on the amount of pecuniary damages recoverable under DOHSA, whereas many other nations do have damage caps applicable to such claims when asserted abroad.

## **VI. RESPONSES TO SPECIFIC QUESTIONS**

### **A. What United States and international laws govern passenger security on board cruise lines?**

In addition to the U.S. laws discussed above, there are also domestic and international laws specifically governing cruise ship security, including passenger safety. Most recently, following the 9/11 attacks, the IMO adopted the International Ship and Port Facility and Security ("ISPS") Code. The ISPS Code is a comprehensive set of measures to enhance the security of ships and port facilities, and which is implemented through the International Convention for the Safety of Life at Sea ("SOLAS").<sup>4</sup> The purpose of the Code is to provide a standardized

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<sup>4</sup> SOLAS is generally regarded as the most important of all international treaties concerning the safety of merchant ships. It has 155 Contracting Governments, which together are responsible for more than 98 per cent of the world shipping fleet by tonnage.

consistent framework for evaluating risk, enabling Governments to offset changes in threat with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures. The ISPS Code requires the cruise lines and other companies operating vessels to designate a company security officer and a ship security officer for each vessel. Following a security assessment, a ship security plan is written for each ship and submitted to the flag administration for approval.

In his December 13, 2005 testimony before the Subcommittee on National Security, Emerging Threats and International Relations and the Subcommittee on Criminal Justice, Drug Policy and Human Resources, ICCL's President Michael Crye, testified about the cruise industry's security practices and jurisdictional protocols. He pointed out that the international and national security requirements included creation of comprehensive ship and terminal security assessments, extensive ship and terminal security plans that are approved by relevant authorities, designation of qualified company, ship and terminal security officers, mandatory security drills and exercises, Ship Security Alert Systems, periodic audits with subsequent updating of security plans, and requirements for improved communication and coordination between ship and terminal operators.

While primarily concerned about security in terms of decreasing a terrorist attack, many of the increased security procedures under the ISPS Code, for example, have increased protection of individual passengers, as has the cruise lines' practices in developing security plans to comply with the Code. These practices include, for example, x-raying or examining every person, piece of luggage and all supplies loaded on board the vessels, not only decreasing the chance of a weapon being brought on board for terrorism purposes but also reducing the risk of crime as well.

In addition to the ISPS Code, the U.S. Congress also has already enacted the Maritime Transportation Security Act ("MTSA"). Section 102 of the MTSA creates a new subtitle VI of title 46, United States Code, to establish a comprehensive national system of transportation security enhancements, including, among other things, directing the Secretary of the department in which the Coast Guard is operating to require owners and operators of ships operating in U.S. waters to institute security programs and develop vessel security plans. Many of the requirements in the MTSA directly align and complement the ISPS Code, however, the MTSA has broader application. For example, it requires owners and operators of vessels and facilities, which may be involved in a transportation security incident, to develop vessel and facility security plans and submit them to the Coast Guard for approval.

Like the ISPS Code, additional regulation under the MTSA has not only increased security against terrorism threats but has also increased protection of passengers from a variety of potential crimes. Increased training of crew on procedures has enhanced security aboard ship overall. Additional equipment and increased security procedures likewise result in a safer ship environment.

**B. Who is the official responsible for enforcing such laws on board a cruise ship?**

As a legal matter, the ISPS Code confirms the role of the Master in exercising his professional judgment over decisions necessary to maintain the security of the ship. It says he shall not be constrained by the cruise line or any other person in ensuring security. Significantly, it is my understanding that every cruise line has training procedures in place to help ensure that each crewmember receives safety, crime awareness, reporting and prevention training, all of which has increased since the implementation of the ISPS and MTSA. All cruise ships have a designated security officer in charge of directly enforcing security laws and protocols.

**C. What type of security measures, both trained personnel and equipment, are on board cruise lines to ensure passenger safety?**

As my experience is in maritime legal matters, I would refer the Committee to the testimony of those in the operations departments of the cruise lines for specific details. My general understanding and observations lead me to conclude that cruise lines have greatly increased training and continue to develop and provide equipment that not only enhances security in addressing terrorism concerns, but also continues to improve safety awareness as it applies to shipboard crime generally. I believe all cruise ships within the ICCL fleet employ security personnel who are trained in maintaining security and order on board, under the direction of a security officer and, ultimately, the ship's Master. The number of such personnel varies according to size of ship, itinerary, passenger demographics and other factors. Closed circuit cameras, x ray screening, computerized door locks that automatically record all entrances into passenger cabins, computerized ship access identification systems for passenger and crew screening, strict segregation of passenger and crew areas, non-fraternization policies between crew and passengers, restricted shipboard access, "no-guest" policy, security rounds, and zero tolerance crime reporting protocols, are all commonplace on cruise ships today.

**D. If a crime occurs on board a cruise ship, who investigates the crime and what are their training and qualifications?**

Through a number of treaties and agreements between the United States and other countries, U.S. authorities, such as the FBI, investigate crimes against Americans or perpetrated by Americans no matter where the crimes occur. In recognition of this, the ICCL membership in 1999 adopted a zero tolerance policy for crimes on cruise ships and a reporting regime in excess of any legal requirements.

The U.S. Coast Guard also has jurisdiction over all ships when entering U.S. waters and has participated in investigating serious marine incidents, when they occur, involving American passengers and crew. Local authorities, on occasion, may also be called by the cruise line to assist in an investigation when the incident is believed to have occurred with the ship is in state waters or berthed at a port within the jurisdiction of local law enforcement.

In addition to U.S. authorities, a cruise line is legally required to extend full cooperation equally to law enforcement authorities in other nations. For example, the Commonwealth of the Bahamas is a flag state where many ICCL member ships are registered. The Bahamas has extensive ties with the United Kingdom including coordination of law enforcement.

Until the FBI or other appropriate authority begins an investigation, cruise lines, although not experts in criminal or forensic investigation, provide the same or better response to potential criminal situations as their shore-side counterparts. In the event of an incident, the Staff Captain, head security officer, and security personnel are usually the first responders. Most of these officers have extensive prior military or law enforcement experience and have also worked with the FBI and U.S. Coast Guard to learn crime reporting procedures and basic crime scene techniques and evidence gathering. When appropriate, lawyers and professional investigators also have been engaged to assist in attending a vessel and coordinating any necessary law enforcement response.

**E. How are jurisdictional issues handled on board foreign flagged vessels?**

As explained above, cruise lines routinely seek the assistance of the FBI or other governmental agencies in responding to a potential crime on board any ship. In the case of Americans, wherever in the world the incident arose, they notify the FBI, as well as the country under which the ship is flagged. If the incident arose at sea they also notify the country of the next port of call. If the incident occurs while the ship is in port, they will notify the local authorities in that port country. In cases of overlapping jurisdiction between different nations, law enforcement authorities work together cooperatively, in many instances according to longstanding treaties and bilateral or multilateral agreements, to bring perpetrators to justice.

The cruise lines cooperate fully in all such investigations. I am unaware of any instance in my career when a law enforcement official was denied access to any ship for purposes of conducting an investigation. In my experience the cruise lines welcome the involvement of law enforcement authorities in order to determine whether, in fact, a crime has been committed, and if so, to make sure the perpetrator is brought to justice. However, cruise lines, like airlines, hotels, restaurants, theme parks, resorts, theaters and other comparable facilities, neither have the capability, expertise nor legal authority to investigate or prosecute crimes. They therefore rely principally on the responsible authorities to do so.

**VII. CONCLUSION**

Criminal offenses on board cruise ships, regardless of their nation of registry, are expressly subject to U.S. jurisdiction when committed by or against an American. Federal statutes embodying longstanding principles of international law exercise that jurisdiction on the high seas and even in foreign waters for crimes such as assault and sexual assault, murder and manslaughter, kidnapping, terrorism, theft, robbery, burglary, arson and even malicious mischief. Though crime on cruise ships is rare, U.S. citizens who become victims have the resources of the FBI at their disposal, unlike most victims of comparable crime on land. In many cases the FBI's efforts may even be augmented by investigative efforts of local police and the ship's own

security team. Information provided to this Committee by the cruise industry demonstrates not only that instances of crime at sea are rare as compared to on land, but are routinely reported to the FBI.

Security initiatives, both internationally and within the U.S., have greatly enhanced overall cruise ship security, as has the standard practices of cruise lines in ensuring safety on board. It is simply no accident that crimes and casualties at sea are rare compared to those occurring on land. Tragedies that have occurred, even considering the huge number of passengers carried each year, have caused the ICCL member lines to redouble their efforts.

Ultimately, passengers traveling to or from U.S. ports on cruise ships, or elsewhere in the world on ships owned by companies based in the U.S., also have full recourse to the U.S. civil justice system to litigate whatever grievances they may have. In fact, unlike litigants on land, cruise passengers can choose between a federal or state forum in most cases. Generally, cruise lines are subject to the same duty of care applied to businesses and facilities on land, and state consumer laws have often been relied upon to augment federal maritime law. In certain types of cases, particularly those involving alleged assaults or intoxication, maritime law provides even greater protection to cruise passengers than plaintiffs suing on similar claims ashore.

I appreciate this opportunity to brief the Committee on the U.S. laws governing security, criminal and civil liability affecting cruise operators, and thank the Committee for its thorough consideration of the foregoing points.